Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Children's Television Obligations	)	MM Docket No. 00-167
Of Digital Television Broadcasters	)	
	)	

Reply Comments of

CHILDREN NOW

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I. Introduction

Children Now, in association with the national coalition People for Better TV, hereby submits the following reply comments in response to the *Notice of Proposed Rulemaking* (hereinafter, "*NPRM*") in the above-captioned proceeding that was released on October 5, 2000. Children Now again commends the Commission for responding to the dramatic changes portended by digital technology through the instant rulemaking. By recognizing the applicability of all educational and informational programming requirements and advertising restrictions of the Children's Television Act of 1990 (hereinafter, "CTA") to digital broadcasters,[1] and by inviting dialogue on the opportunities and potential problems raised by the importation of those requirements and restrictions into the digital age, the Commission has laid the groundwork for a highly constructive regulatory framework.

In our initial comments, Children Now expressed our support for a series of proposals carefully tailored to ensure basic protections for children, while at the same time providing flexibility for broadcasters to grow and evolve with the unfolding digital age. In contrast to Children Now's efforts to strike a careful balance between protecting children and facilitating innovation and growth by broadcasters, a number of broadcasters took a remarkably hard line in their initial comments, suggesting that the digital age warrants no regulatory change with respect to children's programming.[2] While these broadcasters' resistance to regulatory compromise in itself is disappointing, especially when juxtaposed with their receipt of an extraordinary government benefit in the form of

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[1] *See NPRM* at ¶ 12.

[2] *See, e.g., Viacom NPRM Comments* at 5-6; *National Association of Broadcasters ("NAB") Comments* at 2-3; *Named State Broadcasters Associations NPRM Comments* at 2-3.

digital spectrum,[3] it is the broadcasters' substantive arguments against the *NPRM*'s regulatory proposals that ring most hollow.

In the instant reply comments, Children Now responds to the main facets of the broadcasters' arguments against regulatory change. First, Children Now responds to the suggestion that, despite the dramatic changes portended by the digital age, and the significant evidence suggesting the benefits of proposed regulatory modifications, the Commission has no discretion to modify its existing regulations. Second, Children Now responds to the suggestion that the time is not ripe for regulatory modification. Finally, Children Now responds to the argument that further delineation of broadcasters' public interest obligations with respect to the valuable digital spectrum accorded them violates the Constitution and falls outside of the Commission's statutory powers.

Children Now notes that, throughout our reply comments, we refer to the reply comments of the Center for Media Education ("CME") and People for Better TV ("PBTV"). The reply comments of CME and PBTV, like those of Children Now, offer extensive analysis as to the flawed nature of the broadcasters' arguments against regulatory modification. Furthermore, as Children Now points out throughout our reply comments, the legal and factual support for regulatory change provided both by CME and by Children Now in their respective initial comments, also undermines the broadcasters' arguments against adapting regulations for the digital age.

II. The Commission Has Ample Basis to Reassess its Regulatory Framework in Light of Digital Technology.

Among the primary arguments raised by broadcasters against regulatory change is that the Commission lacks sufficient factual basis to reshape existing rules concerning

[3] *See, e.g., Community Television, Inc. v. FCC*, 216 F.3d 1133, 1137 (D.C. Cir. 2000).

children's educational and informational programming, as new rules may be based only upon determinations that the existing rules have failed.[4] This argument rests upon the profoundly flawed premise that the Commission lacks discretion to make predictive judgments about future changes relevant to the implementation of statutory goals, or otherwise to revise existing regulations through full and fair rulemaking processes.

In addition to this fundamental legal error, the broadcasters' argument evinces a failure to have anticipated the extensive initial comments filed by Children Now and CME, citing published analyses, interviews with communications experts, and other research to justify the reshaping of core programming obligations in light of digital technology.[5] In citing inadequacies in existing core programming which digital technology can help to alleviate, as well as new opportunities and new dangers presented by digital technology which must be addressed, the public interest commenters offer more than sufficient evidence to justify the reshaping of core programming regulations.

A. The Broadcasters' Argument Ignores the Commission's Wide Discretion to Revise Existing Regulations Through Full and Fair Rulemaking Processes, Particularly Where Necessitated By Changes in the Broadcasting Industry.

It is well established both that an agency may revise existing regulations as a general matter, and more particularly that an agency has wide discretion to base rulemakings upon predictive judgments as to future outcomes. Regarding the former, the Administrative Procedure Act plainly contemplates agency modification of existing rules, so long as such modification is preceded by public notice and an opportunity for comment, *see, e.g., Alaska Professional Hunters Association, Inc. v. FAA*, 177 F.3d

[4] *See, e.g., NAB NPRM Comments* at 8-9; *Viacom NPRM Comments* at 15-16; *Named State Broadcasters Associations NPRM Comments* at 5.

[5] *See generally Children Now NPRM Comments; CME NPRM Comments.*

1030, 1034 (D.C. Cir. 1999), is not arbitrary and capricious, and does not exceed the discretion accorded the agency by Congress. *See, e.g., Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965, 968 (D.C. Cir. 1999).

Courts are particularly mindful of the need for agencies to be able to modify regulations to adapt to changing circumstances and evolving industry conditions. *See NAACP v. FCC*, 682 F.2d 993, 998 (1982) (citing *FCC v. National Citizens Committee For Broadcasting*, 436 U.S. 775, 797 (1978)). Indeed, the U.S. Court of Appeals for the D.C. Circuit has noted that "an agency's predictive judgment regarding a matter within its sphere of expertise is entitled to 'particularly deferential' review." *Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965, 971 (D.C. Cir. 1999) (citing *Milk Industries Foundation v. Glickman*, 132 F.2d 1467, 1478 (D.C. Cir. 1998)). *See also NAACP v. FCC*, 682 F.2d at 1001 (noting that "greater discretion is given administrative bodies when their decisions are based upon judgmental or predictive conclusions," as "[s]uch predictions are more in the nature of policy decisions entitled to substantial deference, not calling for complete and specific factual support in the record").[6]

The well-established legal framework thus belies broadcasters' arguments that

[6] Furthermore, it is not the case, as one commenter suggests, that the Commission's promulgation of the three-hour rule and other core programming regulations in 1996 somehow prevents the Commission from modifying its rules as necessitated by changing circumstances. *See NAB NPRM Comments* at 8-11. This suggestion, like the broadcaster commenters' view on the Commission's ability to revisit regulations generally, ignores long-established precedent making clear the wide discretion of agencies to modify regulations on the basis of evolving industry conditions. Nor can it legitimately be suggested that any regulatory modifications would undermine broadcasters' ability to rely upon a clearly defined regulatory framework. This is not an instance in which the Commission seeks to claim a mere "interpretative" change and thus to avoid public notice and comment on a regulatory modification. *Cf., e.g., National Family Planning and Reproductive Health Association, Inc. v. Sullivan*, 979 F.2d 227, 235-36 (D.C. Cir. 1992). To the contrary, the Commission has provided all interested parties with notice and an opportunity to comment on the proposed modifications. To suggest that modifications cannot be made even in the context of such a process is to suggest that the Commission should have no capacity to adapt to changing times.

the Commission may act only upon a determination that the existing rules have not been adhered to or otherwise have been insufficient,[7] or the even more restrictive contention that the Commission must wait until the digital era has begun so that the inadequacy of existing rules can be proven in that context.[8] To the contrary, the Commission not only enjoys wide discretion to undertake a full and fair notice and comment process to determine how best to address the dramatic changes portended by digital technology, but it is well advised to have done so.

The following subsection links the legal reality of the Commission's wide discretion to modify existing regulations with the support offered by public interest commenters for such modification. Specifically, there is extensive support in the record for the notions that regulatory modification is both desirable and necessary, that it is crucial for such modification to occur prior to the unfolding of the digital age, and that modification can occur in a manner which will accord broadcasters appropriate flexibility and room for growth.

B. The Broadcasters' Argument is Belied by the Extensive Factual Support Provided by Public Interest Commenters.

Not only does the Commission have wide discretion to reexamine and modify its existing regulatory framework in light of digital technology, but there exists significant basis in the record for the Commission to do so. Indeed, it is ironic that while the broadcaster commenters spend significant time arguing that there is no basis in the record to modify existing regulations and attempting to narrow the Commission's legal grounds for inquiry, these commenters offer virtually no evidentiary basis themselves to suggest that regulatory modifications would be problematic. And to the extent that these

[7] *See NAB NPRM Comments* at 8-9; *Viacom NPRM Comments* at 15-16.

commenters do attempt to call specific proposals into question, they either dispute proposals that the public interest commenters do not support or even actively disavow,[9] or make largely unexplained references to such proposals as being "premature" or "arbitrary," while ignoring their inherent flexibility and the precedent from which they derive.[10] Thus, contrary to broadcasters' contentions, the record is rife with evidence favoring the modification of existing regulations, and virtually devoid of evidence to the contrary.

While the initial comments of the public interest commenters speak for themselves, Children Now reviews briefly some of the evidentiary support provided in those comments in favor of regulatory modification. To begin with, Children Now's own comments are based upon detailed interviews with fifteen experts on children and the media and on communications generally.[11] These experts opine, as an initial matter, that public interest obligations should be commensurate with the benefits accorded broadcasters through the spectrum that they are granted, and thus that it is a wise policy choice to make core programming obligations rise in proportion to enhanced spectrum capacity.[12] Furthermore, these experts opine that digital technology provides opportunities to correct existing problems and deficiencies in current core programming requirements and to enhance the effectiveness of existing requirements, and raises potential new problems that must be addressed. With respect to digital technology's potential for addressing existing problems, Children Now's experts observe, for example,

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[8] *See Named State Broadcasters Associations NPRM Comments* at 5.

[9] *See, e.g., Viacom Comments* at 10-14 (arguing against requiring core programming on every programming stream); *NAB Comments* at 3-5 (same).

[10] *See, e.g., Viacom Comments* at 14-15 (describing proposed proportional rule as "arbitrary"); *NAB Comments* at 4-5 (arguing that modifications would be premature until they can be adapted to "reflect the actual services offered by broadcasters").

[11] *See Children Now NPRM Comments* at note 2.

the tendency of existing core programming to become "lost" among the multitude of other programs. They suggest that digital technology could help rectify this problem by increasing the quantity of core programming while providing broadcasters with the option to create specialized "children's channels" should they so desire, and further by increasing access to information about programming by parents and children alike.[13] With respect to digital technology's potential for enhancing the effectiveness of existing requirements, Children Now's experts emphasize, among other things, the importance of ensuring proportional distribution of such enhanced benefits as interactivity.[14] And with respect to potential new problems raised by digital television which must be addressed, Children Now's experts opine at length on the importance of finding a balanced but effective means of importing advertising restrictions into the realm of digital interactivity.[15]

In addition to Children Now's expert commentary, both CME and Children Now refer extensively to published research and analysis regarding existing problems which digital technology can address, as well as unique opportunities and problems presented by digital television. CME cites, for example, existing inadequacies in programming options provided by broadcasters for preschool-aged children and for girls of all ages.[16] CME further notes that existing core programming tends to focus disproportionately on social-emotional rather than informational needs, and that there is little programming with a local or community focus.[17] Enhanced quantification requirements would increase

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[12] *See id.* at notes 4, 13.
[13] *See id.* at 23 (discussing benefits of increasing access to program information); *id.* at Appendix A at 3-4 & note 7 (discussing benefits of aggregating core programming).
[14] *See id. at* pp. 16-21.
[15] *See id. at* note 98 and accompanying text.
[16] *See CME NPRM Comments* at 7 and notes 14-15.
[17] *See id.* at 7 and notes 16-17.

opportunities to meet these needs, without imposing content-based mandates upon the type of core programming required. Indeed, CME's research, when combined with one Children Now expert's suggestion that increasing programming quantity may well foster "niche marketing" to subgroups of young children,[18] strongly suggests that an enhanced quantification requirement can help to fill existing programming gaps.

Finally, Children Now conducted three focus groups in order to glean information directly from young people. Feedback from these focus groups suggests that the interactive capabilities of digital television present tremendous potential which should not be squandered, as well as new dangers which must be addressed from the outset through balanced but effective advertising restrictions.[19]

In short, the record is replete with evidence indicating that digital technology can play a significant role in alleviating existing inadequacies in core programming requirements and their implementation, that digital technology provides new opportunities to enhance the effective implementation of the CTA, and that digital television poses new problems for which new solutions must be crafted. In contrast, there is virtually no evidence offered to suggest that proposals such as those supported by Children Now would be problematic or even unhelpful. Viewing the record in light of the Commission's broad discretion to modify existing regulations in preparation for the digital age, Children Now strongly urges the Commission to promulgate the modifications that it proposes. To do otherwise would be to squander the rare and historic opportunity presented to craft a fair and balanced regulatory framework which is tailored to evolve and grow with the digital broadcasting market while ensuring basic

[18] *Children Now NPRM Comments* at note 7.
[19] *Id.* at pp. 16-21, 40-42, Appendix D.

minimum protections for children. The following section explores the ripeness of this opportunity in more detail, responding to broadcasters' arguments that a digital television rulemaking is premature.

III. The Time is Ripe to Modify the Regulatory Framework to Adapt to Digital Technology.

In another instance of unintended irony on the broadcasters' part, their arguments as to the "prematurity" of regulatory changes themselves are premature, insofar as they plainly fail to anticipate the nature of the proposals supported by public interest commenters' in their initial briefs. Thus, the broadcasters' "prematurity" arguments bear little if any relevance to the proposals supported by Children Now and CME, which are specifically tailored to evolve with the digital market and with broadcasters' use of digital technology. In this section, Children Now briefly discusses its own major proposals, explaining why each is uniquely suited to facilitate innovation and growth among digital broadcasters as the digital age unfolds.

At the outset, Children Now reiterates two components of its initial comments: First, our suggestion that any affirmative programming requirements should become effective as to each broadcaster once that broadcaster's programming becomes at least 50% digital, while any advertising restrictions unique to digital television should become effective immediately upon the airing of any digital program,[20] and second, our suggestion that the Commission continue to revisit issues concerning digital television as the digital age unfolds.[21] The first suggestion gives broadcasters room to adapt to the changing environment, enabling them to experiment with the new technology and to

[20] *Id.* at note 17.
[21] *Id.* at 44-45.

build a significant portion of their creative and marketing agendas before incorporating modified core programming requirements into those agendas. This suggestion also envisions an organic growth process for core programming itself in the digital age, enabling broadcasters to develop portions of their core programming schedule before they become subject to a full proportional programming requirement.

Children Now's second suggestion, that the Commission should continue to revisit issues regarding digital television as the digital age unfolds, anticipates a continued process of collaboration between the public and private sectors. Indeed, this approach underscores all of Children Now's proposals, which stress the striking of a balance between ensuring basic protections for children's needs at the outset of the digital age,[22] while framing those protections in such a way as to enable broadcasters to grow and innovate. That notions of adaptation and flexibility lie at the very heart of our proposals strongly belies broadcasters' contentions that regulatory modifications would prematurely impose upon them a rigid and unyielding set of mandates.

A. Children Now's Core Programming Proposals are Inherently Flexible and Adaptive to the Changing Needs and Preferences of Broadcasters.

Indeed, notions of adaptation and flexibility are particularly evident in the proportional nature of several of Children Now's proposals with respect to core programming. In particular, the proportional core programming rule[23] would, by definition, impose no more additional core programming hours than are proportional to broadcasters' increase in overall programming hours, and hence to their use of

[22] We also refer the Commission to PBTV's and CME's responses to broadcasters' prematurity arguments. In particular, we second PBTV's concern with respect to the folly of waiting until digital broadcasting patterns have become entrenched to impose regulatory modifications.

[23] *See Children Now NPRM Comments* at Section II(B).

multicasting. Thus, broadcasters' claims that the proportional rule is "arbitrary,"[24] or otherwise that regulatory modifications would increase programming obligations regardless of broadcasters' use of multicasting technology,[25] simply ignore the nature of the proportional rule.[26]

Similarly, Children Now's proposed proportional interactivity rule[27] simply would reflect broadcaster's overall usage of interactive technology.[28] Indeed, the proportional interactivity rule would establish that, to the extent that broadcasters avail themselves of valuable, government-granted access to interactive technology in their overall programming, they owe the public proportional access to the same technology in core programming. To the extent that broadcasters find use of the technology infeasible or otherwise undesirable, the proportional interactivity rule simply would not effect them.

Perhaps most reflective of the innately adaptive nature of Children Now's recommendations are those proposals which would enhance access by the public, and particularly parents, to programming information.[29] Such proposals are premised on the notion that the best and most natural facilitator of broadcasting changes in the public interest is the public itself, and particularly parents, whose children are the intended beneficiaries of core programming requirements. Increased parental access to core

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[24] *See Viacom NPRM Comments* at 14-15.

[25] *See, e.g., NAB NPRM Comments* at 4.

[26] Similarly, in spite of the extensive time spent by broadcasters arguing against the imposition of a core programming requirement on every programming stream, *see supra* note 9, neither Children Now's proportional rule, or, for that matter, the menu approach proposed by CME, would impose such a requirement.

[27] *See Children Now NPRM Comments* at Section II(C)(1).

[28] Similarly, Children Now's proposed proportional promotional rule would of course impact broadcasters only to the extent that they choose to promote their non-core programming. Furthermore, the proportional promotional rule provides particular room for broadcaster flexibility, insofar as it would enable broadcasters to choose between promoting their core programming directly, versus airing public service announcements on the nature and benefits of core programming as a general matter. *See Children Now NPRM Comments* at Section II(E).

[29] *See Children Now NPRM Comments* at Section II(C)(2).

programming information not only would empower parents, but would enable broadcasters to respond to the needs of parents and children as expressed through market forces.

Finally, Children Now's proposal that broadcasters be required simply to shift potentially preemptive programming to another programming stream rather than preempt core programming, or alternatively that they be required to shift core programming to a different stream and sufficiently to advertise the fact of the shift,[30] is not premature. While it is true that not all broadcasters may choose to multicast at all times, the fact remains that digital technology provides broadcasters with multicasting ability. Requiring multicasting when a broadcaster wishes to air otherwise preemptive programming is a relatively small cost for broadcasters to pay to enable them to air both programs. Furthermore, this proposal retains additional flexibility by maintaining an exemption for "breaking news," so long as such news is carefully defined.[31]

B. Children Now's Advertising Proposals Embrace Innovation While Protecting Children, and are not Premature.

With respect to advertising, broadcasters argue that it is too early "to bar new capabilities before their usefulness has been explored", and point to the difficulty in distinguishing between commercial and educational websites.[32] This argument, like the broadcasters' "prematurity" arguments regarding core programming, is well accommodated by Children Now's proposal. Specifically, Children Now proposes not that commercial links be eliminated, but simply that they be subject to restrictions

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[30] *Id.* at Section II(F).

[31] *Id.*

[32] *NAB NPRM Comments* at 23. *See also, e.g., Viacom NPRM Comments* at 30-34.

analogous to existing temporal restrictions, as well as restrictions mandating separation between advertising and programming.[33]

Children Now's proposal thus facilitates broadcasters' use of, and innovation with respect to, interactive programming, while at the same time protecting children against interactive advertising's uniquely invasive nature. Indeed, while Children Now's initial comments cite research regarding the potentially significant benefits of interactive programming, they also cite longstanding research regarding the unique vulnerability of children to advertising.[34] These analyses, taken as a whole, suggest that while interactivity should be given the opportunity to develop and even to flourish, it would be folly to ignore the potential dangers of interactive advertising. Thus, the fair, balanced and feasible approach offered by Children Now should be adopted. [35]

IV. Children Now's Proposals, and Those of Other Public Interest Commenters, Fall Well Within the Bounds of the Constitution and the Commission's Statutory Authority.

A. Affirmative Core Programming Obligations Are Entirely Consistent With the First Amendment.

Broadcasters' constitutional objections to core programming requirements, and proposed modifications thereto, are entirely misplaced. Children Now thus fully supports CME's discussion of the relevant constitutional issues and refers the Commission to that discussion. Additionally, however, Children Now wishes further to elaborate on two points of particular relevance to the constitutional debate. First, Children Now elaborates

[33] *See Children Now NPRM Comments* at III(B).
[34] *See id.* at 16-21, 34-42.
[35] Furthermore, Children Now reiterates that any advertising restrictions should be effectuated immediately, as the negative impact of intrusive advertising practices upon child viewers is not dependent upon external factors, such as the degree to which a given broadcaster's overall programming is digital. *See supra* at 9; *Children Now NPRM Comments* at note 17.

upon the continued existence of spectrum scarcity, noting that spectrum scarcity is defined not by overall spectrum volume but by limitations upon the number of persons or groups with meaningful access to spectrum, and that such limitations are particularly evident in the case of digital spectrum. Second, Children Now notes that, integrally tied to the notion of spectrum scarcity, is the notion that the receipt of spectrum constitutes a grant by the government of a valuable public resource, and that core programming obligations are an entirely reasonable and constitutional price to pay for such privilege.

With regard to spectrum scarcity, it is plain, as CME notes, that the scarcity rationale depends not upon the number of channels available, but upon the number of parties who have access to those channels to disseminate programming. *See, e.g., Turner Broadcasting v. FCC*, 512 U.S. 622, 638 (1994); *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 388 (1969). To suggest that broadcasters' obligations to share the benefits of their valuable spectrum has been diminished over the years, is to suggest that the line between average citizen and broadcaster has effectively been crossed; that a network's access to the airwaves is not much different than the access that any interested party could attain, and thus that there thus is nothing for the former to "share." Such a scenario strays far from reality.

That spectrum remains a highly coveted resource, and that the number of those who would like to obtain it far exceeds the number of those who *can* obtain it, is all the more evident where digital spectrum is concerned. Indeed, the U.S. Court of Appeals for the D.C. Circuit recently adjudicated a dispute over the Commission's allocation of digital spectrum, noting in its opinion the inherent difficulties faced by the Commission in allocating "limited spectrum." *Community Television, Inc. v. FCC*, 216 F.3d 1133,

1146 (D.C. Cir. 2000). In the facts underlying that case, the Commission limited spectrum allocation to existing broadcasters and those who had been approved for broadcast facility permits by April of 1997. *Id.* at 1136. Furthermore, the Commission initially deemed "spectrum shortfall" a potential basis for denial of digital channels in its spectrum allocation rules. *Id.* at 1138-39.

That there remains a wide disparity between the number of parties who wish to broadcast, and the number of parties to whom spectrum is available, makes plain not only the scarcity of spectrum but also its tremendous value to those to whom it is granted. Indeed, it is not just spectrum's scarcity which long has been deemed a basis for imposing affirmative obligations upon broadcasters, but also the fact that the receipt of spectrum constitutes a valuable and very public resource granted by the government, indebting the broadcast "speaker" to the public in a manner that the proverbial "street corner speaker" is not indebted. *See, e.g., CBS v. Democratic National Committee*, 412 U.S. 94, 101-03, 116-17, 122 (1973). *See also* S.Rep. No. 227, 101st Cong., 1st Sess. 10-18 (1989) (hereinafter "Senate Report"); H. Rep. No. 385, 101st Cong., 1st Sess. 8-12 (1989) (hereinafter "House Report"); *1996 Report and Order*, 11 FCC Rcd 10660 at ¶¶ 14, 149-59. Ensuring that a portion of broadcasters' spectrum be allocated for programming beneficial to children thus continues to fall well within constitutional boundaries.

B. The Commission Has Statutory Authority to Implement the Proposed Regulatory Modifications.

The Commission also has full statutory authority to implement the modifications

proposed by Children Now and CME. As discussed in Children Now's initial comments, the language of the CTA makes clear[36] that the Commission must ensure programming directed toward children's educational and informational needs, but that the Commission has broad discretion in implementing this requirement. The Commission further has discretion under the CTA to impose requirements with respect to broadcasters' "overall programming."[37] On its face, then, the CTA's language gives the Commission significant discretion to evaluate a panoply of options for improving the programming experience for children. Proposals such as increasing core programming requirements, ensuring that the benefits of new technology be dispersed in the context of core programming, ensuring that core programming be adequately promoted and that the viewing public otherwise is sufficiently informed about it, and regulating core programming's preemption, all fall well within this broad range of potential options. The CTA's language is equally expansive with respect to proposed advertising restrictions,

[36] Furthermore, were there a need to look beyond the CTA's plain language, its legislative history makes equally clear that the Commission has broad discretion to consider a wide range of options for effectuating improvements in children's programming and for protecting children from excessive commercialization. Regarding the former, both the Senate and House Reports speak generally of the pervasive influence of television upon children, *see* Senate Report at 5; House Report at 5, 14, with the Senate Report noting that "we need to pay special attention to [children's] needs." Senate Report at 5. And while the Senate and House Reports state that the Commission is not required to quantify core programming obligations, these statements makes equally clear by implication, as does the broad language both of the CTA itself and its legislative history, that such quantification is well within the Commission's discretion, as are any appropriate supporting measures. *See* Senate Report at 23; House Report at 17. Indeed, the Senate Report's conclusion that "[g]eneral audience programming . . . is not sufficient to meet the special needs of children," Senate Report at 23, would have little meaning were the Commission left without discretion to impose a minimum core programming requirement should it deem such a requirement important to facilitate sufficient core programming, as it did in 1996. *See Children Now NPRM Comments* at note 6 and accompanying text. Regarding the promulgation of advertising restrictions under the CTA, both the House and Senate Reports cite studies regarding the unique vulnerability of children to advertising, and make clear the CTA's broad purpose to "limit[] the amount of commercial matter presented during children's programs to the greatest extent possible without negatively impacting the viability of children's programming on commercial television." House Report at 8. *See also id.* at 6; Senate Report at 9-10.

[37] *See Children Now NPRM Comments* at 27 (citing 47 U.S.C. § 303a).

noting broadly that the "time devoted to commercial matter" during children's programming shall be limited.[38]

In addition to the broad discretion accorded the Commission to implement such regulations as it deems useful to further children's programming needs and to protect children from overly invasive advertising under the CTA, the Commission has broad discretion under the Telecommunications Act generally, given the longstanding statutory requirement that broadcast licensees act in furtherance of the "public interest, convenience, and necessity." Indeed, the U.S. Court of Appeals for the D.C. Circuit has noted that "[r]egulation in the public interest is defined broadly, and under that gauge much discretion and flexibility are given to agencies to devise their regulations to meet changing circumstances." *NAACP v. FCC*, 682 F.2d at 999.

Finally, it is well established that an agency must be accorded substantial deference in interpreting a statute that it is charged to administer. Thus, an agency's construction of a statute must only be a reasonable one, so long as the matter at issue is not one with respect to which Congress has unambiguously indicated its intent. *See, e.g., Chevron, U.S.A. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984).

Once it is established that an agency is acting within its constitutional and statutory authority, the only question that remains is whether its actions otherwise are "arbitrary and capricious," as discussed earlier in the instant reply comments.[39]

We thus end as we began: It is well within the Commission's statutory and constitutional authority to promulgate the modifications proposed by Children Now, and the Commission further has a great deal of policymaking discretion to modify children's

[38] *See* 47 U.S.C. § 303a.
[39] *See supra* Section II(A).

programming regulations in light of digital technology. Children Now strongly urges the Commission to use this discretion to seize the opportunity presented by the instant rulemaking. Specifically, Children Now urges the Commission to reject the uncompromising stance taken by a number of broadcasters, and to adopt the fair, balanced, and well supported proposals offered by Children Now.